

**A-Engrossed
House Bill 3386**

Ordered by the House April 21
Including House Amendments dated April 21

Sponsored by Representative BENTZ; Representative HUFFMAN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires Environmental Quality Commission to adopt by rule program for facilitating compliance with low carbon fuel standards. Requires program to include certain provisions for managing and containing costs of compliance with low carbon fuel standards[.], **including but not limited to provisions for purchase and use of compliance credits. Provides for Department of Environmental Quality to enter into agreements with nongovernmental entities to serve as compliance credit generators. Sets forth required terms of agreement. Requires compliance credit generators to use funds received through transfer of compliance credits for certain purposes.**

[Requires Department of Environmental Quality to hold credit clearance market in any low carbon fuel standards compliance year during which certain events occur. Sets forth certain requirements for administration of credit clearance market.]

Provides for expedited review of compliance credit generator provisions by Supreme Court upon petition by adversely affected party. Provides that if court makes certain determination on or before January 1, 2021, compliance credit generator provisions are repealed and provisions of Act are enacted in lieu thereof that establish Transportation Emissions Reduction Account in State Highway Fund, require department to sell compliance credits and require department to deposit funds received for transfer of compliance credits in account. Specifies uses of account.

[Becomes] **Provides that compliance credit generator provisions become operative January 1, 2018.**

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to low carbon fuel standards; creating new provisions; amending ORS 468A.275; and pre-
3 scribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) Sections 2 and 4 to 7 of this 2017 Act are added to and made a part of**
6 **ORS chapter 468A.**

7 **(2) ORS 468A.275 is added to and made a part of sections 2 to 7 of this 2017 Act.**

8 **SECTION 2. As used in sections 2 to 7 of this 2017 Act:**

9 **(1) "Biodiesel" means a motor vehicle fuel consisting of mono-alkyl esters of long chain**
10 **fatty acids derived from vegetable oils, animal fats or other nonpetroleum resources, not**
11 **including palm oil.**

12 **(2) "Compliance credit" means an instrument issued by a compliance credit generator**
13 **that may be used by a regulated party in place of a credit to demonstrate compliance with**
14 **the low carbon fuel standards.**

15 **(3) "Compliance credit generator" means a nongovernmental entity that has entered into**
16 **an agreement with the Department of Environmental Quality to issue compliance credits.**

17 **(4) "Credit" means a unit of measure, expressed in metric tons of carbon dioxide equiv-**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **alent that is generated when the carbon intensity of a fuel that is produced, imported, dis-**
2 **persed or used in Oregon is less than the applicable low carbon fuel standard.**

3 **(5) “Deficit” means a unit of measure, expressed in metric tons of carbon dioxide equiv-**
4 **alent, that is generated when the carbon intensity of a fuel that is produced, imported, dis-**
5 **persed or used in Oregon exceeds the applicable low carbon fuel standard.**

6 **(6) “Greenhouse gas” has the meaning given that term in ORS 468A.210.**

7 **(7) “Low carbon fuel standards” means standards adopted by the Environmental Quality**
8 **Commission by rule under ORS 468A.275 for the reduction of greenhouse gas emissions, on**
9 **average, per unit of fuel energy.**

10 **(8) “Motor vehicle” has the meaning given that term in ORS 801.360.**

11 **(9) “Regulated party” means a person responsible for complying with the low carbon fuel**
12 **standards.**

13 **SECTION 3.** ORS 468A.275 is amended to read:

14 *468A.275. [(1) As used in this section:]*

15 *[(a) “Greenhouse gas” has the meaning given that term in ORS 468A.210.]*

16 *[(b) “Low carbon fuel standards” means standards for the reduction of greenhouse gas emissions,*
17 *on average, per unit of fuel energy.]*

18 *[(c) “Motor vehicle” has the meaning given that term in ORS 801.360.]*

19 *[(2)(a)] (1) The Environmental Quality Commission shall adopt by rule low carbon fuel standards*
20 *for gasoline, diesel and fuels used as substitutes for gasoline or diesel.*

21 *[(b)] (2) The commission may adopt the following related to the standards, including but not*
22 *limited to:*

23 *[(A)] (a) A schedule to phase in implementation of the standards in a manner that reduces the*
24 *average amount of greenhouse gas emissions per unit of fuel energy of the fuels by 10 percent below*
25 *2010 levels by the year 2025 or by a later date if the commission determines that an extension is*
26 *appropriate to implement the standards;*

27 *[(B)] (b) Standards for greenhouse gas emissions attributable to the fuels throughout their*
28 *lifecycles, including but not limited to emissions from the production, storage, transportation and*
29 *combustion of the fuels and from changes in land use associated with the fuels;*

30 *[(C)] (c) Provisions allowing the use of all types of low carbon fuels to meet the low carbon fuel*
31 *standards, including but not limited to biofuels, biogas, natural gas, liquefied petroleum gas, gaso-*
32 *line, diesel, hydrogen and electricity;*

33 *[(D)] (d) Standards for the issuance of deferrals, established with adequate lead time, as neces-*
34 *sary to ensure adequate fuel supplies;*

35 *[(E)] (e) Exemptions for fuels that are used in volumes below thresholds established by the*
36 *commission;*

37 *[(F)] (f) Standards, specifications, testing requirements and other measures as needed to ensure*
38 *the quality of fuels produced in accordance with the low carbon fuel standards, including but not*
39 *limited to the requirements of ORS 646.910 to 646.923 and administrative rules adopted by the State*
40 *Department of Agriculture for motor fuel quality; and*

41 *[(G)] (g) Adjustments to the amounts of greenhouse gas emissions per unit of fuel energy as-*
42 *signed to fuels for combustion and drive train efficiency.*

43 *[(c)] (3) Before adopting standards under this section, the commission shall consider the low*
44 *carbon fuel standards of other states[including but not limited to Washington,] for the purpose of*
45 *determining schedules and goals for the reduction of the average amount of greenhouse gas emis-*

1 sions per unit of fuel energy and the default values for these reductions for applicable fuels.

2 [(d) *The commission shall adopt by rule provisions for managing and containing the costs of com-*
3 *pliance with the standards, including but not limited to provisions to facilitate compliance with the*
4 *standards by ensuring that persons may obtain credits for fuels used as substitutes for gasoline or*
5 *diesel and by creating opportunities for persons to trade credits.*]

6 [(e)] (4) The commission shall exempt from the standards any person who imports in a calendar
7 year less than 500,000 gallons of gasoline and diesel fuel, in total. Any fuel imported by persons that
8 are related or share common ownership or control shall be aggregated together to determine
9 whether a person is exempt under this [paragraph] **subsection.**

10 [(f)(A) *The commission by rule shall prohibit fuels that contain biodiesel from being considered an*
11 *alternative fuel under these standards unless the fuel meets the following standards:*]

12 [(i) *Fuel that consists entirely of biodiesel, designated as B100, shall comply with ASTM D 6751*
13 *and shall have an oxidation stability induction period of not less than eight hours as determined by*
14 *the test method described in European standard EN 15751; and]*

15 [(ii) *Fuel that consists of a blend of diesel fuel and between 6 and 20 volume percent biodiesel, and*
16 *designated as biodiesel blends B6 to B20, shall comply with ASTM D 7467 and shall have an*
17 *oxidation stability induction period of not less than 20 hours as determined by the test method de-*
18 *scribed in European standard EN 15751.*]

19 [(B) *The commission may adopt rules different from those required under subparagraph (A) of this*
20 *paragraph if an ASTM or EN standard applicable to biodiesel is approved or amended after March*
21 *12, 2015, or if the commission finds that different rules are necessary due to changes in technology or*
22 *fuel testing or production methods.*]

23 [(C) *As used in this subsection, "biodiesel" means a motor vehicle fuel consisting of mono-alkyl*
24 *esters of long chain fatty acids derived from vegetable oils, animal fats or other nonpetroleum re-*
25 *sources, not including palm oil.*]

26 [(3) *In adopting rules under this section, the Environmental Quality Commission shall evaluate:*]

27 [(a) *Safety, feasibility, net reduction of greenhouse gas emissions and cost-effectiveness;*]

28 [(b) *Potential adverse impacts to public health and the environment, including but not limited to*
29 *air quality, water quality and the generation and disposal of waste in this state;*]

30 [(c) *Flexible implementation approaches to minimize compliance costs; and]*

31 [(d) *Technical and economic studies of comparable greenhouse gas emissions reduction measures*
32 *implemented in other states and any other studies as determined by the commission.*]

33 [(4)(a) *The provisions of this section do not apply to fuel that is demonstrated to have been used*
34 *in any of the following:*]

35 [(A) *Motor vehicles registered as farm vehicles under the provisions of ORS 805.300.*]

36 [(B) *Farm tractors, as defined in ORS 801.265.*]

37 [(C) *Implements of husbandry, as defined in ORS 801.310.*]

38 [(D) *Motor trucks, as defined in ORS 801.355, used primarily to transport logs.*]

39 [(E) *Motor vehicles that are not designed primarily to transport persons or property, that are op-*
40 *erated on highways only incidentally, and that are used primarily for construction work.*]

41 [(F) *Watercraft.*]

42 [(G) *Railroad locomotives.*]

43 [(b) *The Environmental Quality Commission shall by rule adopt standards for persons to qualify*
44 *for the exemptions provided in this subsection.*]

45 **SECTION 4. (1) The Environmental Quality Commission by rule shall prohibit fuel that**

1 contain biodiesel from being considered an alternative fuel under the low carbon fuel stan-
2 dards adopted under ORS 468A.275 unless the fuel meets the following standards:

3 (a) Fuel that consists entirely of biodiesel, designated as B100, shall comply with ASTM
4 D 6751 and shall have an oxidation stability induction period of not less than eight hours as
5 determined by the test method described in European standard EN 15751; and

6 (b) Fuel that consists of a blend of diesel fuel and between 6 and 20 volume percent
7 biodiesel, and designated as biodiesel blends B6 to B20, shall comply with ASTM D 7467 and
8 shall have an oxidation stability induction period of not less than 20 hours as determined by
9 the test method described in European standard EN 15751.

10 (2) The commission may adopt rules different from those required under subsection (1)
11 of this section if an ASTM or EN standard applicable to biodiesel is approved or amended
12 after March 12, 2015, or if the commission finds that different rules are necessary due to
13 changes in technology or fuel testing or production methods.

14 **SECTION 5.** (1) In order to facilitate compliance with the low carbon fuel standards
15 adopted under ORS 468A.275, the Environmental Quality Commission shall adopt by rule a
16 program in which:

17 (a) Regulated parties generate deficits and may reconcile the deficits, and thus be in
18 compliance with the low carbon fuel standards for a compliance period, by obtaining credits;
19 and

20 (b) Persons shall have opportunities to trade credits.

21 (2) The program adopted by the Environmental Quality Commission under this section
22 must include provisions for managing and containing the costs of compliance with the low
23 carbon fuel standards. Provisions required by this subsection must include, but need not be
24 limited to, provisions for regulated parties to purchase compliance credits from compliance
25 credit generators, and to use purchased compliance credits to demonstrate compliance with
26 the low carbon fuel standards. Provisions relating to compliance credits must provide that:

27 (a) Compliance credits may not be banked; and

28 (b) Compliance credits may not be traded.

29 **SECTION 6.** (1) Under the program adopted by the Environmental Quality Commission
30 pursuant to section 5 of this 2017 Act, a nongovernmental entity may not participate as a
31 compliance credit generator unless the Department of Environmental Quality and the non-
32 governmental entity enter into an agreement. The agreement entered into under this section
33 must require the compliance credit generator to:

34 (a) Offer for transfer to regulated parties an unlimited quantity of compliance credits.

35 (b) Transfer compliance credits at a price of \$75 per compliance credit.

36 (c) Use funds received through the transfer of compliance credits for:

37 (A) Providing grants to Oregon's post-secondary institutions of education to research, in
38 partnership with manufacturers, low carbon intensity transportation technology;

39 (B) Establishing and managing a revolving loan fund to provide loans for the manufacture
40 of products in Oregon that will reduce transportation-related greenhouse gas emissions;

41 (C) Providing grants to school districts that do not provide transportation to students
42 on school buses, as defined in ORS 801.460, for the costs incurred to provide transportation
43 to students on a commercial bus operated by a city or county, a mass transit district es-
44 tablished under ORS 267.010 to 267.390 or a transportation district established under ORS
45 267.510 to 267.650; or

1 **(D) Establishing and managing a rebate program to provide rebates to low income per-**
2 **sons for the purchase in this state of alternative fuel or zero-emission vehicles, under which**
3 **an alternative fuel or zero-emission vehicle for which a person receives a rebate must be:**

4 **(i) Registered in this state; and**

5 **(ii) Used to replace a motor vehicle powered by a combustion engine.**

6 **(d) Regularly provide the commission with timely and detailed information on the activ-**
7 **ities under paragraph (c) of this subsection that the compliance credit generator has funded**
8 **in whole or in part by funds received by the compliance credit generator through the trans-**
9 **fer of compliance credits.**

10 **(e) Include on the governing body of the compliance credit generator an ex officio mem-**
11 **ber designated by the department, who shall also serve on the compliance credit generator's**
12 **nominating committee for filling governing body vacancies.**

13 **(f) Allow the department to inspect, after providing notice, any financial record related**
14 **to the activities under paragraph (c) of this subsection that are funded in whole or in part**
15 **by funds received by the compliance credit generator through the transfer of compliance**
16 **credits.**

17 **(g) Arrange, during the term of the agreement, to be audited by the Secretary of State**
18 **or an independent auditor selected by the Secretary of State, and provide to the department**
19 **all records related to the audit.**

20 **(h) Ensure that each officer of the compliance credit generator and each member of the**
21 **governing body of the compliance credit generator:**

22 **(A) Files with the department on or before April 15 of each year a statement disclosing**
23 **the economic interests of the officer or member that contains the same information as a**
24 **statement of economic interest described in ORS 244.060;**

25 **(B) At meetings of the governing body of the compliance credit generator, declares any**
26 **actual conflict of interest or potential conflict of interest, as those terms are defined in ORS**
27 **244.020, whenever an actual conflict of interest or potential conflict of interest arises; and**

28 **(C) At meetings of the governing body of the compliance credit generator, abstains from**
29 **participating in any discussion or decision-making process involving an actual conflict of in-**
30 **terest as defined in ORS 244.020.**

31 **(2) An agreement entered into under this section must be for a term that does not exceed**
32 **one year, but may be renewed upon the expiration of a term.**

33 **(3) The department shall post all information received by the department pursuant to**
34 **this section on a website of the department.**

35 **(4) On or before February 1 of each year, the department shall report to the appropriate**
36 **interim committees of the Legislative Assembly, in the manner required by ORS 192.245, a**
37 **summary of all activities by compliance credit generators under subsection (1)(c) of this**
38 **section that are funded in whole or in part by funds received through the transfer of com-**
39 **pliance credits, and an estimate of the greenhouse gas emissions reduced through the ac-**
40 **tivities, expressed in metric tons of carbon dioxide equivalent.**

41 **(5) The commission may adopt rules to implement this section.**

42 **SECTION 7. (1) In adopting rules under sections 2 to 7 of this 2017 Act, the Environ-**
43 **mental Quality Commission shall evaluate:**

44 **(a) Safety, feasibility, net reduction of greenhouse gas emissions and cost-effectiveness;**

45 **(b) Potential adverse impacts to public health and the environment, including but not**

1 limited to air quality, water quality and the generation and disposal of waste in this state;

2 (c) Flexible implementation approaches to minimize compliance costs; and

3 (d) Technical and economic studies of comparable greenhouse gas emissions reduction
4 measures implemented in other states and any other studies as determined by the commis-
5 sion.

6 (2)(a) The provisions of sections 2 to 7 of this 2017 Act do not apply to fuel that is dem-
7 onstrated to have been used in any of the following:

8 (A) Motor vehicles registered as farm vehicles under the provisions of ORS 805.300.

9 (B) Farm tractors, as defined in ORS 801.265.

10 (C) Implements of husbandry, as defined in ORS 801.310.

11 (D) Motor trucks, as defined in ORS 801.355, used primarily to transport logs.

12 (E) Motor vehicles that are not designed primarily to transport persons or property, that
13 are operated on highways only incidentally, and that are used primarily for construction
14 work.

15 (F) Watercraft.

16 (G) Railroad locomotives.

17 (b) The commission shall by rule adopt standards for persons to qualify for the ex-
18 emptions provided in this subsection.

19 **SECTION 8.** If the provisions of sections 2 and 4 to 7 of this 2017 Act and the amend-
20 ments to ORS 468A.275 by section 3 of this 2017 Act relating to the receipt of funds by
21 compliance credit generators for the transfer of compliance credits are, on or before January
22 1, 2021, judicially declared to impose a tax or excise levied on, with respect to, or measured
23 by the storage, withdrawal, use, sale, distribution, importation or receipt of motor vehicle
24 fuel or any other product used for the propulsion of motor vehicles, that is subject to the
25 provisions of Article IX, section 3a, of the Oregon Constitution, then:

26 (1) Section 2 of this 2017 Act is repealed and section 9 of this 2017 Act is enacted in lieu
27 thereof;

28 (2) Section 5 of this 2017 Act is repealed and sections 10 and 11 of this 2017 Act are en-
29 acted in lieu thereof; and

30 (3) Section 6 of this 2017 Act is repealed.

31 **SECTION 9.** As used in sections 2 to 7 of this 2017 Act:

32 (1) "Biodiesel" means a motor vehicle fuel consisting of mono-alkyl esters of long chain
33 fatty acids derived from vegetable oils, animal fats or other nonpetroleum resources, not
34 including palm oil.

35 (2) "Compliance credit" means an instrument issued by the Department of Environ-
36 mental Quality that may be used by a regulated party in place of a credit to demonstrate
37 compliance with the low carbon fuel standards.

38 (3) "Credit" means a unit of measure, expressed in metric tons of carbon dioxide equiv-
39 alent that is generated when the carbon intensity of a fuel that is produced, imported, dis-
40 pensed or used in Oregon is less than the applicable low carbon fuel standard.

41 (4) "Deficit" means a unit of measure, expressed in metric tons of carbon dioxide equiv-
42 alent, that is generated when the carbon intensity of a fuel that is produced, imported, dis-
43 pensed or used in Oregon exceeds the applicable low carbon fuel standard.

44 (5) "Greenhouse gas" has the meaning given that term in ORS 468A.210.

45 (6) "Low carbon fuel standards" means standards adopted by the Environmental Quality

1 Commission by rule under ORS 468A.275 for the reduction of greenhouse gas emissions, on
2 average, per unit of fuel energy.

3 (7) "Motor vehicle" has the meaning given that term in ORS 801.360.

4 (8) "Regulated party" means a person responsible for complying with the low carbon fuel
5 standards.

6 **SECTION 10.** (1) In order to facilitate compliance with the low carbon fuel standards
7 adopted under ORS 468A.275, the Environmental Quality Commission shall adopt by rule a
8 program in which:

9 (a) Regulated parties generate deficits and may reconcile the deficits, and thus be in
10 compliance with the low carbon fuel standards for a compliance period, by obtaining credits;
11 and

12 (b) Persons shall have opportunities to trade credits.

13 (2) The program adopted by the Environmental Quality Commission under this section
14 must include provisions for managing and containing the costs of compliance with the low
15 carbon fuel standards. Provisions required by this subsection must include, but need not be
16 limited to, provisions for the use of compliance credits to demonstrate compliance with the
17 low carbon fuel standards. Provisions for the use of compliance credits must provide that
18 compliance credits:

19 (a) May not be banked;

20 (b) May not be traded;

21 (c) May be transferred only to regulated parties by the Department of Environmental
22 Quality; and

23 (d) May be transferred only at a price of \$75 per compliance credit.

24 (3) Funds received by the department for the transfer of compliance credits to regulated
25 parties shall be paid to the State Treasurer to be deposited into the Transportation Emis-
26 sions Reduction Account established in the State Highway Fund.

27 **SECTION 11.** The Transportation Emissions Reduction Account is established in the
28 State Highway Fund. Interest earned by the account shall be credited to the account. Moneys
29 in the account are continuously appropriated to the Department of Transportation to be used
30 only to carry out programs, projects or activities to reduce transportation-related
31 greenhouse gas emissions in this state as those programs, projects or activities relate to the
32 construction, reconstruction, improvement, repair, maintenance, operation and use of public
33 highways, roads, streets and roadside rest areas as allowed by Article IX, section 3a, of the
34 Oregon Constitution.

35 **SECTION 12.** (1) It is the intent of the Legislative Assembly that the provisions of
36 sections 2 and 4 to 7 of this 2017 Act and the amendments to ORS 468A.275 by section 3 of
37 this 2017 Act relating to the receipt of funds by compliance credit generators for the transfer
38 of compliance credits do not constitute a tax or excise subject to the provisions of Article
39 IX, section 3a, of the Oregon Constitution.

40 (2) Jurisdiction is conferred on the Supreme Court to determine whether the provisions
41 of sections 2 and 4 to 7 of this 2017 Act and the amendments to ORS 468A.275 by section 3
42 of this 2017 Act, as they relate to the receipt of funds by compliance credit generators for
43 the transfer of compliance credits, constitute a tax or excise subject to the provisions of
44 Article IX, section 3a, of the Oregon Constitution.

45 (3) A person that is or that will be adversely affected by the provisions of sections 2 and

1 4 to 7 of this 2017 Act and the amendments to ORS 468A.275 by section 3 of this 2017 Act
2 relating to the receipt of funds by compliance credit generators for the transfer of compli-
3 ance credits may institute a proceeding for review by filing with the Supreme Court a peti-
4 tion that meets the following requirements:

5 (a) The petition must be filed on or before January 1, 2018.

6 (b) The petition must include the following:

7 (A) A statement of the basis of the challenge; and

8 (B) A statement and supporting affidavit showing how the petitioner is or will be ad-
9 versely affected.

10 (4) The petitioner shall serve a copy of the petition by registered or certified mail upon
11 the Department of Environmental Quality, the Attorney General and the Governor.

12 (5) Proceedings for review under this section shall be given priority over all other mat-
13 ters before the Supreme Court.

14 (6) In the event that the Supreme Court determines that there are factual issues in the
15 petition, the Supreme Court may appoint a special master to hear evidence and to prepare
16 recommended findings of fact.

17 SECTION 13. If a judicial determination is made that any moneys that have been received
18 by a nongovernmental entity through the transfer of compliance credits under an agreement
19 with the Department of Environmental Quality under section 6 of this 2017 Act would, if
20 retained, be subject to the provisions of Article IX, section 3a, of the Oregon Constitution,
21 the funds shall be returned to the person from which they were received.

22 SECTION 14. (1) Sections 1, 2 and 4 to 7 of this 2017 Act and the amendments to ORS
23 468A.275 by section 3 of this 2017 Act become operative on January 1, 2018.

24 (2) The Environmental Quality Commission and the Department of Environmental Qual-
25 ity may take any action before the operative date specified in subsection (1) of this section
26 that is necessary for the commission or the department to exercise, on and after the oper-
27 ative date specified in subsection (1) of this section, all of the duties, functions and powers
28 conferred on the commission and the department by sections 1, 2 and 4 to 7 of this 2017 Act
29 and the amendments to ORS 468A.275 by section 3 of this 2017 Act.

30 SECTION 15. This 2017 Act takes effect on the 91st day after the date on which the 2017
31 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

32